


February 25, 2011  
CLERK, U.S. BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA  
  
0003307339

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AND Debtor, MURRAY NEAL

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA - FRESNO DIVISION

In re	)	Case No.: 10-12372
	)	
MURRAY L. NEAL,	)	Adv. Pro. No.:
Debtor,	)	
	)	

CHAPTER 7

PINNACLE ARMOR, INC., a California  
Corporation, and MURRAY NEAL, an  
individual,  
  
Plaintiffs,

v.

ROBERT H. FREIHEIT AND DENISE  
ANN FREIHEIT AS TRUSTEES AND  
ROBERT K. HENRICKSEN AS TRUSTEE  
OF BIG SKY TRUST DTD 10-7-04 DBA  
LIBERTY ASSOCIATES,

Honorable Whitney Rimel

Defendants.

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**ADVERSARY COMPLAINT**

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Plaintiffs, PINNACLE ARMOR, INC., and MURRAY L. NEAL, (hereinafter, "PLAINTIFFS" ), by their undersigned attorney, for their complaint in this action, state as follows:

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**JURISDICTION AND VENUE**

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1. This Court has jurisdiction of this adversary proceeding by reference from the United States District Court for the Eastern District of California pursuant to 28 U.S.C. § 157(a). The District Court has jurisdiction pursuant to 28 U.S.C. § 1334(b) in that this is a civil proceeding arising under Title 11 of the United States Code.

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2. This is a non-core "related to" proceeding. The bankruptcy court has jurisdiction over it by virtue of 28 U.S.C. 1334(b), but final orders and judgments must be entered by the United States District Court.

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3. Venue is appropriate in this District pursuant to 28 U.S.C. § 1409(a) because this bankruptcy case is pending in this District.

**PARTIES**

4. Plaintiff, MURRAY NEAL(hereinafter "NEAL") is an individual and at all times herein mentioned was a resident of Fresno County, California, and a shareholder in Pinnacle Armor, Inc. (hereinafter "Pinnacle"), holding in excess of 95 % of the shares in Pinnacle.

5. Plaintiff, PINNACLE ARMOR, INC., (hereinafter "PINNACLE") is now, and at all times herein mentioned was, a California corporation in good standing with its principal place of business in Fresno County, California.

6. Defendant ROBERT H. FREIHEIT is now, and at all times mentioned in this complaint was, a trustee of the Big Sky Trust DTD 10-7-04 DBA Liberty Associates.

7. Defendant DENISE ANN FREIHEIT is now, and at all times mentioned in this complaint was, a trustee of the Big Sky Trust DTD 10-7-04 DBA Liberty Associates.

8. Defendant ROBERT K. HENRICKSEN is now, and at all times mentioned in this complaint was a trustee of the Big Sky Trust DTD 10-7-04 DBA Liberty Associates.

9. PLAINTIFFS are informed and believe, and on the basis of that information and belief allege, that at all times mentioned in this complaint, defendants were the agents and employees of their co-defendants, and in doing the things alleged in this complaint were acting within the scope of that agency and employment.

## FACTUAL ALLEGATIONS

10. On or about January 29, 2004, NEAL, acting on behalf of PINNACLE as the lessee, and Defendant ROBERT FREIHEIT, acting on behalf of Liberty Associates, the lessor, entered into a Commercial Lease (hereinafter “Lease”) on the real property located at 5425 Home Avenue, Suite 101, Fresno, California 93727 (hereinafter referred to as the “Premises”). A true and correct copy of the Commercial Lease is attached as Exhibit “A” to Exhibits to Adversary Complaint.

11. Pursuant to Paragraph 31 of the Commercial Lease if any party brings an action or proceeding to enforce the terms or declare rights hereunder, the Prevailing Party shall be entitled to reasonable attorneys' fees.

12. On or about March 8, 2004, Defendant ROBERT FREIHEIT, as the agent of Liberty Associates, and Jonathan Chessum, and NEAL, on behalf of PINNACLE executed an Addendum to Lease Dated January 29, 2004, the Addendum provided that “[N]otwithstanding any reference to Lessees fixtures that are personal property, those items that belong to the Lessees(s) if not timely removed at the end of the tenancy or upon removal of the Lessee, shall be immediately removed from the premises by the Lessee. Those items remaining for more than ten days after the end of the tenancy become the property of the Lessor to do with as he deems necessary.”

13. On or about December 28, 2005, NEAL executed a Guarantee of Lease in favor of Liberty Associates.

1           14.     On or about September 26, 2008, Defendants, ROBERT H. FREIHEIT,  
2 ROBERT FREIHEIT, DENISE ANN FREIHEIT and ROBERT K. HENRICKSEN (hereinafter  
3 collectively referred to as "Defendants"), on behalf of the Big Sky Trust DTD 10-7-04 DBA  
4 Liberty Associates, filed a complaint for Unlawful Detainer (hereinafter "Complaint") against  
5 NEAL and PINNACLE, Fresno County Superior Court Case No. 08CECG03362.

6           15.     On or about January 8, 2009, Defendants caused to be issued a Writ of Possession  
7 of Real Property, Judicial Council Form EJ-130, (herein "Writ of Possession") in Case No.  
8 08CECG03362 which provided that on January 20, 2009, PINNACLE was to be evicted from the  
9 Premises and on or about January 20, 2009, Defendant, ROBERT FREIHEIT, took possession of  
10 the Premises.

11           16.     Code of Civil Procedure Section 715.010(b)(3) and 1174(f) provide that a tenant  
12 who is evicted under a writ of possession has 15 days after the landlord takes possession of the  
13 rental unit to pay reasonable costs of storage and to take possession of items left in the rental  
14 unit.

15           17.     On or about January 20, 2009, the Premises contained the personal property of  
16 PINNACLE, NEAL and Targeted Security Consultants, a sole proprietorship owned by NEAL  
(hereinafter the "Property").

17           18.     Additionally, the terms set forth in the Addendum, the tenant was entitled to  
18 access to the Premises for 10 days after the removal of the tenant, for the purpose of removing  
19 the Property.

20           19.     On or about January 22, Defendant ROBERT FREIHEIT orally informed NEAL  
21 that he would allow NEAL access to the Premises to remove to remove the remaining Property,  
22 however, when NEAL attempted to remove the Property, Defendant ROBERT FREIHEIT  
23 refused to cooperate with NEAL and prevented NEAL from removing the Property.

24           20.     At no time herein mentioned did NEAL or PINNACLE voluntarily abandon the  
25 Property, rather they were was prevented from exercising their legal right to remove the Property  
26 by Defendant ROBERT FREIHEIT.

1           21.     The refusal of Defendant ROBERT FREIHEIT to allow PINNACLE access to the  
2 Premises for ten (10) days after the tenants removal from the Property for the purpose of  
3 removing the Property was a violation of the express terms of the Addendum and a violation of  
4 California Code of Civil Procedure § 715.010(b)(3).

5           22.     Plaintiffs are informed and believe and based on that information and belief allege  
6 that after the Defendants removed NEAL and PINNACLE from the Premises in January, the  
7 Defendants waited more than five months to serve Plaintiffs with a Notice of Right to Reclaim  
8 Abandoned Property, in order to increase the amount of storage fees due on the Property owed by  
9 the Plaintiffs and prevent Plaintiffs from recovering the Property.

10           23.     Or about August 25, 2009, NEAL was contacted by a locksmith hired by  
11 Defendant ROBERT FREIHEIT and informed that the landlord was going to drill open the three  
12 safes belonging to Targeted Security Consultants. NEAL went to the Premises for the purpose of  
13 providing the combination to the safes so that they would not be damaged. At that time NEAL  
14 again informed Defendant ROBERT FREIHEIT that the three safes and their contents were the  
15 property of Targeted Securities Consultants. The Defendant ROBERT FREIHEIT again refused  
16 to allow NEAL to take possession of the three safes and their contents and, as a result, the Fresno  
17 Police Department inventoried the contents of both safes and then booked some of the contents  
18 into the custody of the Fresno Police Department, Case 09-068881, leaving the remaining items  
19 with the Defendant.

20           24.     After reviewing the inventory done by the Fresno Police Department, NEAL  
21 prepared a list of additions and corrections to the inventory done by the Fresno Police  
22 Department and submitted it to the Fresno Police Department which documented that not all of  
23 the Property seized by the Fresno Police Department had been listed in the inventory done by the  
24 Fresno Police Department.

25           25.     On September 26, 2009, pursuant to the Amended Right to Reclaim Abandoned  
26 Property some, but not all, of the Property was auctioned off at a public sale.

1           26.     On September 26, 2009, NEAL attempted to access the Premises, which is located  
2 within the City of Fresno, for the purpose of observing and participating in the auction. However,  
3 NEAL was wrongfully prevented from entering the Premises by Defendant ROBERT FREIHEIT  
4 who had a Fresno County Deputy Sheriff present who threatened to arrest NEAL if he attempted  
5 to enter the Premises.

6           27.     On August 31, 2010, PLAINTIFFS obtained a copy of the Consignor's Total  
7 Report dated September 26, 2009, from Defendants' attorney, William H. Leifer, Esq. The  
8 Consignor's Total Report was generated by the auction company and listed the Property sold at  
9 the public auction on September 26, 2009 by lot by number, by quantity, by description of the  
10 item to be sold, and the individual price and the lot price.

11           28.     Prior to the public sale on September 26, 2009, Defendants and/or their agents,  
12 removed many of the items of Property from the Premises, or otherwise allowed the Property to  
13 be removed by third parties, including, but not limited to the following Property:

- 14           1. Miller Arch Welder
- 15           2. Plasma Cutter
- 16           3. Oxy-Acetylene complete torch kits with tanks and stands (2)
- 17           4. Miller Tig Welder
- 18           5. Rigid compound miter chop saw
- 19           6. Dyna-Glo kerosene space heaters (5)
- 20           7. Milwaukee heavy duty sawzall
- 21           8. Milwaukee 7-1/4" worm drive saw,
- 22           9. Milwaukee 9" angle grinder (2)
- 23           10. Milwaukee 4-1/2" mini-grinders (3)
- 24           11. Milwaukee electromagnetic adjustable drill stand (2)
- 25           12. Skill Jig saw, Mikita 4" circular glass saw
- 26           13. Makita 7-1/4" enclosed circular saw w/vacuum
- 27           14. Porter Cable router kit



- 1 15. Milwaukee 1" band file
- 2 16. Milwaukee variable speed portable band saw
- 3 17. Skill 7-1/4" circular saw (2)
- 4 18. Rigid 7-1/4" circular saw
- 5 19. Delta 5 speed bench top drill press
- 6 20. Dewalt 14" heavy duty multi-cutter chop saw
- 7 21. Wilton 4" disc cutoff saw
- 8 22. Porter Cable double insulated hand laminate trimmer
- 9 23. Milwaukee heavy-duty screw shooter
- 10 24. Porter cable Pneumatic 2" medium crown staple gun
- 11 25. Campbell Hausfield 30 gallon electric air compressor
- 12 26. Makita MAC500 1 HP job site small portable air compressor
- 13 27. 10 ton hydraulic ram system kit
- 14 28. 2"x27' 10K ratchet tie-down (12)
- 15 29. Ball mount with 2-5/16" ball (2)
- 16 30. Weight distribution hitch kit
- 17 31. 30" industrial pedestal fan (4)
- 18 32. Woods power grip hand suction cups 6" (4), 8" (2), 10" (2)
- 19 33. 10 gallon stainless steel wet/dry shop vacuum
- 20 34. 1-1/2" cardboard box stapler
- 21 35. 8' Louisville "A" frame ladder
- 22 36. 12' Louisville "A" frame ladder
- 23 37. 20' Louisville extension ladder (2)
- 24 38. 4' Louisville double side "A" frame ladder
- 25 39. 16' aluminum extension ladder
- 26 40. JET 20"-12 speed drill press
- 27 41. Sentry halon 1211- 9 lb extinguishers (4)

42. Sentry halon 1211- 14 lb extinguishers (6)
43. Grinding/sanding fabrication table with (2) 8" industrial exhaust guard bench grinder and Burr King 12" disc/belt finishing machine
44. Pneumatic 3"sleeve grainer/grinder
45. Porter cable 3" belt sander
46. Jet 2-1/4 ton service jack
47. Ratcheting 6 ton jack stands (4), pallet puller
48. Lifting alloy chain slings 20k pound (2)
49. Twisted eye nylon web slings 9K pound 6' (4)
50. Twisted eye nylon web slings 9K pound 10' (5)
51. Mini ratchet lever hoist 1,00 pound (4)
52. Cyclone portable sand blaster 200 lb capacity
53. Kennedy 17 drawer roller tool cabinet and chest with craftsman tools
54. Bessey heavy duty heat treated welding clamps 18" (14)
55. Bessey heavy duty heat treated welding clamps 36" (6)
56. Palmgren angle milling vice
57. Palmgren quick release vise
58. Palmgren 12" cross slide milling table, aluminum cargo locking bar (4)
59. "A" frame 51" panel truck 2K pound
60. Binks 2 gallon paint tank & gun
61. Devilbiss siphon paint gun/cup
62. Assorted dies, bits, reamers, burrs, drills, taps from .117" to 5".
63. Extension cords (8) 12 gauge three conductor, 50' with OSHA twist lock connectors.
64. Extension cords (8) 10 gauge three conductor, 100' with OSHA twist lock connectors.
65. Air compressor hoses (10) with brass connectors male/female 50' 1.2 ID.
66. Air compressor heavy duty 1-1/2" hose 250'.
67. Two part adhesive pneumatic dispensing machine



1           68. Glass setting/wrapping rack mobile 360 degree rolling mobile  
2 Steel inventory – ¼" AR 500 ballistic grade steel plate 48"x96" – 4 sheets  
3           ½" AR 500 ballistic grade steel plate 48"x96" – 7 sheets  
4           ½" MIL-46100 ballistic grade steel plate 48"x96" – 12 sheets  
5 Ballistic fiberglass inventory – 5/16" 48"x96" – 3 sheets  
6           7/16" 48"x96" – 11 sheets  
7           9/16" 48"x96" – 9 sheets  
8           1-3/8" 48"x96" – 6 sheets  
9 Coreguard inventory – Coreguard CBR 48"x96" sheets 160 – 4 pallets  
10          Coreguard FRP 48"x96" sheets 80 – 2 pallets  
11          Coreguard 48"x96" sheets 20  
12          Coreguard CB 48"x96" sheets 41 – 1 pallet  
13          5/8" drywall 48"x120" sheets 725  
14 Ceramic IR heaters – 20' lengths quantity of 14 units  
15 Heavy duty solid steel fabrication jig – 25'x20' solid 4" square rod construction weighs  
16 approximately 25K pounds.  
17 Heavy duty solid steel adjustable reach forklift hoisting jig – extended reach from 8' to 12' 4000  
18 pound capacity.  
19 Profilon security laminate rolls (4) and dispensing jig  
20 3" ceramic discs AZA152 – (55)  
21 2" ceramic discs AZA 160A – (9 boxes of 180 each)  
22 Aluminum extrusion inventory – All aluminum extrusions are in 20'-2" lengths unless otherwise  
23 noted.  
24 OS-1000 – 87 lengths – clear anodize finish. Die # 15508. 6063 T5 aluminum  
25 OS-1100 – 287 lengths – clear anodize finish. Die # 15578. 6063 T5 aluminum  
26 OS-1100 – 310 lengths – clear anodize finish. Die # 15507. 6063 T5 aluminum  
27 OS-1100 – 294 lengths – clear anodize finish. Die # 15557. 6063 T1 aluminum

1 OS-1100 – 267 lengths – clear anodize finish. Die # 15556. 6063 T1 aluminum  
2 OS-1200 – 20 lengths – clear anodize finish. Die # 15505. 6063 T5 aluminum  
3 OS-1600 – 146 lengths – White Kynar paint. Die # 7468. 6063 T6 aluminum  
4 OS-1600 – 210 lengths – White Kynar paint. Die # 7469. 6063 T6 aluminum  
5 OS-1600 – 133 lengths – White Kynar paint. Die # 7470. 6063 T6 aluminum  
6 OS-1600 – 297 lengths – White Kynar paint. Die # 7471. 6063 T6 aluminum  
7 OS-1700 – 322 lengths – White Kynar paint. Die # 7516. 6063 T6 aluminum  
8 OS-1800 – 7 lengths - alodine coating. Die #35837. 6063 T6 aluminum  
9 OS-1800 – 11 lengths - alodine coating. Die #43154. 6063 T6 aluminum  
10 OS-1800 – 23 lengths - alodine coating. Die #43276. 6063 T6 aluminum  
11 OS-1800 – 9 lengths - alodine coating. Die #43152. 6063 T6 aluminum  
12 OS-1800 – 9 lengths - alodine coating. Die #43161. 6063 T6 aluminum  
13 OS-1800 – 17 lengths - alodine coating. Die #43162. 6063 T6 aluminum  
14 OS-2000 – 89 lengths – alodine coating. Die #2305. 6063 T6 aluminum  
15 OS-2000 – 101 lengths – alodine coating. Die #2307. 6063 T6 aluminum  
16 OS-2000 – 22 lengths – alodine coating. Die #47327. 6063 T6 aluminum  
17 OS-2000 – 125 lengths – alodine coating. Die #47325. 6063 T6 aluminum  
18 OS-2000 – 110 lengths – alodine coating. Die #47331. 6063 T6 aluminum  
19 OS-2000 – 1 length – alodine coating. Die #47328. 6063 T6 aluminum  
20 OS-2000 – 1 length – alodine coating. Die #47329. 6063 T6 aluminum  
21 OS-2000 – 1 length – alodine coating. Die #48472. 6063 T6 aluminum  
22 OS-2000 – 1 length – alodine coating. Die #48475. 6063 T6 aluminum  
23 OS-2000 – 1 length – alodine coating. Die #48476. 6063 T6 aluminum  
24 OS-2000 – 1 length – alodine coating. Die #48477. 6063 T6 aluminum  
25 OS-2000 – 1 length – alodine coating. Die #48556. 6063 T6 aluminum  
26 OS-2000 – 72 lengths – alodine coating. Die #E4386. 6061 T6 aluminum  
27 OS-2000 – 22 lengths – alodine coating. Die #E4387. 6061 T6 aluminum

1 OS-2000 – 44 lengths – alodine coating. Die #E4395. 6061 T6 aluminum  
2 OS-2000 – 1 length – alodine coating. Die #15956. 6063 T6 aluminum  
3 OS-2000 – 1 length – alodine coating. Die #47688. 6063 T6 aluminum  
4 OS-2000 – 1 length – alodine coating. Die #47685. 6063 T6 aluminum  
5 OS-2000 – 1 length – alodine coating. Die #47755. 6063 T6 aluminum  
6 OS-2000 – 1 length – alodine coating. Die #47683. 6063 T6 aluminum  
7 OS-2000 – 1 length – alodine coating. Die #48188. 6063 T6 aluminum  
8 OS-2000 – 1 length – alodine coating. Die #47330. 6063 T6 aluminum  
9 OS-2000 – 1 length – alodine coating. Die #48241. 6063 T6 aluminum  
10 OS-2000 – 1 length – alodine coating. Die #48189. 6063 T6 aluminum  
11 OS-2000 – 14 lengths – alodine coating. Die #48517. 6063 T5 aluminum  
12 OS-2000 – 10 lengths – alodine coating. Die #48519. 6063 T5 aluminum  
13 OS-2000 – 11 lengths – alodine coating. Die #48559. 6063 T5 aluminum  
14 OS-2000 – 2 lengths – alodine coating. Die #48518. 6063 T6 aluminum  
15 OS-2000 – 12 lengths – alodine coating. Die #48678. 6063 T5 aluminum  
16 OS-2000 – 1 length – alodine coating. Die #47688. 6063 T5 aluminum  
17 OS-2000 – 1 length – alodine coating. Die #47332. 6063 T6 aluminum  
18 OS-2000 – 1 length – alodine coating. Die #47333. 6063 T6 aluminum  
19 OS-2000 – 1 length – alodine coating. Die #47336. 6063 T6 aluminum  
20 OS-2000 – 1 length – alodine coating. Die #47334. 6063 T6 aluminum  
21 OS-2000 – 1 length – alodine coating. Die #47686. 6063 T5 aluminum  
22 OS-2000 – 1 length – alodine coating. Die #47689. 6063 T5 aluminum  
23 OS-2000 – 1 length – alodine coating. Die #47684. 6063 T5 aluminum  
24 OS-2000 – 1 length – alodine coating. Die #47557. 6063 T6 aluminum  
25 OS-2000 – 1 length – alodine coating. Die #47854. 6063 T6 aluminum  
26 OS-2000 – 1 length – alodine coating. Die #47853. 6063 T6 aluminum  
27 OS-2000 – 1 length – alodine coating. Die #48450. 6063 T6 aluminum

1 OS-2000 – 14 lengths – alodine coating. Die #48577. 6061 T5 aluminum  
2 OS-2000 – 81 lengths – alodine coating. Die #47335. 6063 T6 aluminum – 18-2” lengths  
3 OS-2000 – 1 length – alodine coating. Die #49263. 6063 T6 aluminum  
4 OS-2000 – 1 length – alodine coating. Die #49264. 6063 T6 aluminum  
5 OS-2000 – 1 length – alodine coating. Die #7126. 6063 T5 aluminum  
6 OS-2000 – 1 length – alodine coating. Die #7087. 6063 T5 aluminum  
7 IS-2100 – 13 lengths – alodine coating. Die #48580. 6063 T5 aluminum  
8 IS-2100 – 9 lengths – alodine coating. Die #48579. 6063 T5 aluminum  
9 IS-2100 – 9 lengths – alodine coating. Die #48578. 6063 T5 aluminum  
10 OS-2200 – 21 lengths – alodine coating. Die #47326. 6063 T6 aluminum  
11 IS-6200 – 211 lengths – clear anodize finish. Die #7423. 6063 T5 aluminum  
12 IS-6200 – 189 lengths – dark bronze anodize finish. Die #7423. 6063 T5 aluminum  
13 IS-6200 – 192 lengths – clear anodize finish. Die #7424. 6063 T5 aluminum  
14 IS-6200 – 192 lengths – dark bronze anodize finish. Die #7424. 6063 T5 aluminum  
15 IS-6200 – 211 lengths – clear anodize finish. Die #7425. 6063 T5 aluminum  
16 IS-6200 – 189 lengths – dark bronze anodize finish. Die #7425. 6063 T5 aluminum  
17 IS-6300 – 181 lengths – clear anodize finish. Die #41048. 6063 T6 aluminum  
18 IS-8400 – 81 lengths – clear anodize finish. Die #8401. 6063 T6 aluminum  
19 IS-8400 – 81 lengths – clear anodize finish. Die #8402. 6063 T6 aluminum  
20 IS-8400 – 79 lengths – clear anodize finish. Die #8403. 6063 T6 aluminum  
21 IS-8400 – 163 lengths – clear anodize finish. Die #8404. 6063 T6 aluminum  
22 IS-8400 – 155 lengths – clear anodize finish. Die #8405. 6063 T6 aluminum  
23 IS-8400 – 121 lengths – clear anodize finish. Die #8406. 6063 T6 aluminum  
24 IS-9000 – 21 lengths – clear anodize finish. Die #61234. 6063 T5 aluminum  
25 IS-9000 – 37 lengths – dark bronze finish. Die #61234. 6063 T5 aluminum  
26 IS-9000 – 40 lengths – clear anodize finish. Die #6124. 6063 T5 aluminum  
27 IS-9000 – 40 lengths – dark bronze finish. Die #6124. 6063 T5 aluminum

1 IS-9000 – 21 lengths – clear anodize finish. Die #3095. 6063 T5 aluminum – 18’ lengths

2 IS-9000 – 21 lengths – dark bronze finish. Die #3095. 6063 T5 aluminum – 18’ lengths

3 29. On or about September 26, 2009, Defendants and/or their agents, removed some  
4 items of Property, including items of Property owned by NEAL and/or Targeted Security  
5 Consultants, from the public sale and either kept those items of Property for themselves or sold  
6 the items of Property to a third party. Defendant ROBERT FREIHEIT also prevented NEAL  
7 from entering the Premises to participate in the auction on behalf of himself and PINNACLE in  
8 violation of Civil Code § 1993.04(b)(a)(1) which states that the owner of the Property has the  
9 right to bid on the property at the time of the sale.

10 30. In addition to preventing NEAL from entering the Premises to bid on the Property,  
11 the Defendants had persons acting as their agents bidding on behalf of the Defendants and when  
12 ever one of the Defendants agents bid on an item, the auctioneer would drop the gavel  
13 immediately ending the sale despite the fact that other bidders were still attempting to bid on the  
14 item. As a result, the items of Property were not sold to the highest bidder but rather were sold to  
15 the Defendants agents for far less then they would have sold for at an open auction.

16 31. On or about February of 2010, Defendants’ through their agent, Ron Sawl,  
17 without giving notice to NEAL or PINNACLE, and without a court order, obtained the release of  
18 the Property held by the Fresno Police Department pursuant to Case: 09-068881 as set forth  
19 above. NEAL has demanded that Defendants return the Property or account for the disposition  
20 of the Property released to the Defendants by the Fresno Police Department but Defendants have  
21 refused and continue to refuse to account for said Property.

22 32. PINNACLE filed a petition for relief under Chapter 11 of the Bankruptcy Code on  
23 January 3, 2010, however the petition has been dismissed.

24 33. NEAL filed a voluntary petition for relief under Chapter 11 of the Bankruptcy  
25 Code on March 9, 2010, in the United States Bankruptcy Court for the Eastern District of  
26 California, Fresno Division, case number 10-12372 (hereinafter “Bankruptcy Case”). The case  
27 has been converted to a Chapter 7.



1           33.     On or about June of 2010, Defendants ROBERT H. FREIHEIT and DENISE  
2 ANN FREIHEIT and ROBERT K. HENRICKSEN, filed a claim in the amount of \$498,410.82  
3 against NEAL in his personal Bankruptcy Case No. 10-12372. The Defendants' claim is based  
4 on the unpaid rent owed by PINNACLE pursuant to the Lease.

5                           **FIRST CLAIM FOR RELIEF**

6                                   **Breach of Contract**

7   **(Against All Defendants)**

8           34.     Plaintiffs repeat and reallege the allegations of paragraphs 1 through 33 above as  
9 if fully set forth herein.

10          35.     PINNACLE and Defendants entered into a written Addendum which provided  
11 that "[N]otwithstanding any reference to Lessees fixtures that are personal property, those items  
12 that belong to the Lessees(s) if not timely removed at the end of the tenancy or upon removal of  
13 the Lessee, shall be immediately removed from the premises by the Lessee. Those items  
14 remaining for more than ten days after The Addendum plainly anticipates allowing the Lessee an  
15 additional 10 days after the end of the tenancy or removal of the Lessee. the end of the tenancy  
16 become the property of the Lessor do with as he deems necessary."

17          36.     Additionally, Code of Civil Procedure Section 715.010(b)(3) and 1174(f) allows  
18 the a tenant evicted under a writ of possession 15 days after the landlord takes possession of the  
19 rental unit to pay reasonable costs of storage and to take possession of items left on the Premises.

20          37.     PINNACLE performed all of the obligations required of PINNACLE under the  
21 Addendum and attempted to remove the Property from the Premises within 10 days of January  
22 20, 2009, the date that Defendants took possession of the Premises.

23          38.     In violation of the Addendum and Code of Civil Procedure Section 715.010(b)(3)  
24 and 1174(f), Defendants refused to allow Plaintiffs access to the Premises after January 22, 2009.

25          39.     At all times herein mentioned, NEAL and PINNACLE were ready, willing and  
26 able to perform their obligations as set forth in the Addendum and would have removed the  
27 Property from the Premises within 10 days of January 20, 2009 but for the interference of



1 Defendants, and each of them.

2 40. Plaintiffs were damaged by Defendants' refusal to allow Plaintiffs to remove  
3 the Property in that Plaintiffs were deprived of their Property which had an approximately  
4 aggregate value of \$2,700,000.

5 41. PINNACLE was further damaged by the Defendants' conduct in that the loss of  
6 the Property deprived Pinnacle of the ability to manufacture and sell the body armor and other  
7 armor products manufactured by PINNACLE, and caused PINNACLE to lose contracts to  
8 manufacture its body armor products.

9 42. Defendants knew, or should have known, that depriving Plaintiffs of the Property  
10 would cause the PINNACLE to lose existing contracts and that the loss of the profits to be  
11 derived from those contracts would cause the financial collapse of both Plaintiffs, and it did  
12 cause the financial collapse of both Plaintiffs.

13 43. As a direct and proximate result of Defendants' actions, Plaintiffs lost a  
14 substantial amount of the Property and lost profits from the sale of Plaintiffs' body armor  
15 products. Additionally, NEAL has lost valuable fire arms and ammunition. Both Plaintiffs have  
16 been damaged in an amount to be determined at trial. Defendants' wrongful conduct was a  
17 substantial factor in causing this harm to both Plaintiffs.

## 18 **SECOND CLAIM FOR RELIEF**

### 19 **Fraud and Misrepresentation**

#### 20 **(Against All Defendants)**

21 44. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 33 above as if  
22 fully set forth herein.

23 45. On or about March 8, 2004, and again on or about January 20, 2009, Defendant  
24 ROBERT FREIHIET, on behalf of Liberty Associates, falsely represented to NEAL that NEAL  
25 would have 10 days from the date of termination of the Lessee's tenancy to remove the Property.

26 46. The representations made by Defendant ROBERT FREIHEIT were in fact false.  
27 The true facts were: that Defendants did not intend to allow the Plaintiffs 10 days to remove the  
28

1 Property.

2 47. When Defendant ROBERT FREIHEIT made these representations he knew them  
3 to be false, and these representations were made by Defendant ROBERT FREIHEIT with the  
4 intent to defraud and deceive Plaintiffs and with the intent to induce Plaintiffs to act in the  
5 manner herein alleged.

6 48. At the time Defendant ROBERT FREIHEIT made the promises to the Plaintiffs,  
7 the Defendants had no intention of performing them.

8 49. Plaintiffs, at the time these representations were made by Defendants and at the  
9 time Plaintiffs took the actions herein alleged, were ignorant of the falsity of the Defendant's  
10 representations and believed them to be true.

11 50. In reliance on these representations, Plaintiffs were induced to and did execute the  
12 Addendum, and the Guarantee of Lease, and further induced not to remove all of the Property  
13 from the Premises within the two days the Defendants allowed Plaintiffs access to the Premises.  
14 Had Plaintiffs known the actual facts, that Defendants would allow Plaintiffs only two partial  
15 days to remove the Property, Plaintiffs would not have taken such action and would have  
16 removed the Property prior to January 20, 2009.

17 51. Plaintiffs' reliance on Defendant ROBERT FREIHEIT'S representations was  
18 justified because the Addendum contained a provision allowing the Lessee 10 days after  
19 termination of tenancy to remove the Lessee's personal property.

20 52. As a proximate result of Defendant ROBERT FREIHEIT'S fraud and deceit and  
21 the facts herein alleged, Plaintiffs were induced to leave the Property on the Premises after the  
22 termination of the Lessee's tenancy by reason of which Plaintiffs have been damaged in the  
23 approximate sum of \$2,700,000.

24 53. Because of the deliberate, malicious, and oppressive nature of Defendant  
25 ROBERT FREIHEIT'S conduct, Plaintiffs seek an award of punitive damages against  
26 Defendants, and each of them, in an amount sufficient to punish Defendants and deter them and  
27 others from similar acts.

**THIRD CLAIM FOR RELIEF****Trespass to Chattel****(Against All Defendants)**

54. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 33 above as if fully set forth herein.

55. At all times herein mentioned, Plaintiffs owned, possessed, or had a right to possess the Property, including the Property held by the Fresno County Sheriff's Department, and had the right to demand that Defendants deliver possession of the Property to Plaintiffs.

57. Defendants intentionally interfered with the Plaintiffs' use and/or possession of the Property as set forth above.

58. The Plaintiffs did not consent to the Defendants interference with their right to own or possess the Property.

59. Defendants interference with their right to own and/or possess the Property was a substantial factor in causing the Plaintiffs' harm.

60. Defendants, in refusing to return the Property to the Plaintiffs, exercised dominion and control over the Property, and this exercise of dominion and control are both the primary and substantial factors causing Plaintiffs damage. But for Defendants' intentional and substantial misconduct, Plaintiffs would have retained the Property and would not have been damaged.

61. As a result of Defendants' interference, Plaintiffs have been damaged in the approximate amount of \$2,700,000 .

62. Because of the deliberate, malicious, and oppressive nature of Defendants' conduct, Plaintiff seeks an award of punitive damages against Defendants in an amount sufficient to punish Defendants and deter them and others from similar acts.

**FOURTH CLAIM FOR RELIEF****Unjust Enrichment****(Against All Defendants)**

63. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 9, 14, 15, 17,

1 20, 23, 24, 25, 26, above as if fully set forth herein.

2 64. As a result of the conduct described above, Defendants have been and will be  
3 unjustly enriched at the expense of Plaintiffs. Specifically, Defendants' unfair and illegal actions  
4 as described above have enabled Defendants to sell or otherwise dispose of the Property in  
5 violation of the law and the Addendum, thereby unjustly enriching Defendants at the expense of  
6 the Plaintiffs in an amount to be proven at trial.

7 65. Defendants should be required to disgorge this unjust enrichment.

8 On the First and Third Causes of Action For:

- 9 (a) Actual damages of approximately \$2,700,000 plus pre- and post-judgment  
10 interest against all Defendants;  
11 (b) Special and damages according to proof at trial;  
12 (c) Consequential damages according to proof at trial; and,  
13 (d) Attorney's fees and costs;

14 On the Second Cause of Action For:

- 15 (a) Actual damages of approximately \$2,700,000 plus pre- and post-judgment  
16 interest against all Defendants;  
17 (b) Special and damages according to proof at trial;  
18 (c) Consequential damages according to proof at trial; and,  
19 (d) Punitive damages;

20 On the Fourth Cause of Action For:

- 21 (a) For restitution;  
22 (b) For disgorgement of ill-gotten gains as set forth herein;

23 On All Causes of Action:

- 24 (a) For costs of this action; and  
25 (b) And other and further relief that the court considers proper.  
26

1 Dated: February 24, 2011.

2 LAW OFFICES OF SUSAN M. BROWN

3  
4 By: /s/ Susan M. Brown

5 SUSAN M. BROWN Attorney for Plaintiffs  
6 MURRAY NEAL and PINNACLE ARMOR,  
7 INC.  
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27 ADVERSARY COMPLAINT OF  
28 PLAINTIFF MURRAY L. NEAL  
AND PINNACLE ARMOR, INC.